



BOULT • CUMMINGS  
CONNERS • BERRY<sub>PLC</sub>

RECEIVED

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July 30, 2002 REGULATORY AUTHORITY  
DOCKET ROOM

Honorable Sara Kyle, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243

Re: Application for Authority to Transfer Control

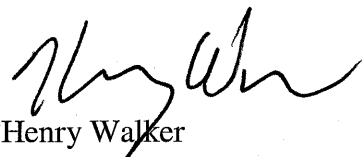
Docket No: 02-00825

Dear Chairman Kyle:

Enclosed please find the original and fourteen copies of the Application of Birch Telecom of the South, Inc. for Authority to Transfer Control from Birch Telecom, Inc., Debtor – In-Possession, to the Shareholders of Birch Telecom, Inc. A \$25.00 is enclosed for the filing fee. Please contact me with any questions.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:   
Henry Walker

HW/CW

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**APPLICATION OF BIRCH )  
TELECOM OF THE SOUTH, INC. )  
FOR AUTHORITY TO TRANSFER )  
CONTROL FROM BIRCH TELECOM, )  
INC., DEBTOR-IN-POSSESSION, )  
TO THE SHAREHOLDERS OF BIRCH )  
TELECOM, INC. )**

**DOCKET NO. \_\_\_\_\_**

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**APPLICATION FOR AUTHORITY TO TRANSFER CONTROL**

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Birch Telecom of the South, Inc. ("Birch South") (the "Applicant"), by its undersigned counsel, hereby petitions the Tennessee Regulatory Authority ("TRA") for authority to effect an indirect transfer control which will result from a proposed reorganization of its parent company Birch Telecom, Inc., Debtor-in-Possession ("Birch"), in chapter 11 under the Bankruptcy Code (the "Reorganization Plan").<sup>1</sup> Pursuant to the Reorganization Plan, control of the Applicant's parent company, and consequently indirect control of Birch South, will transfer from BTI Ventures, LLC ("BTI"), a wholly owned subsidiary of the investment firm Kohlberg, Kravis, Roberts & Co. ("KKR"), to a diffuse group of shareholders of Birch.

Birch South plans no change to the company's name. Birch South anticipates no adverse impact on service to any of its customers as a result of this reorganization or bankruptcy filings. Further, Birch South does not anticipate any changes to its rates or quality of service. A corporate organization chart, which will

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<sup>1</sup> Birch and all of its subsidiaries filed for bankruptcy protection simultaneously in the U.S. Bankruptcy Court for the District of Delaware. This bankruptcy filing effected an involuntary *pro forma* indirect change of control of Birch South from Birch Telecom, Inc. to Birch Telecom, Inc., as Debtor-in-Possession.

at **Exhibit A**. A chart depicting the ownership of Birch pre- and post-restructuring is attached at **Exhibit B**.

## **I. THE COMPANIES**

### **A. The Applicant and Its Parent Company**

1. Birch South is a company incorporated under the laws of Delaware with its offices located at 2020 Baltimore Avenue, Kansas City, MO 64108-1914. Birch South provides local exchange and interexchange telecommunications services in Tennessee pursuant to a certificate of authority granted to it by the TRA on July 20, 2000, Docket NO. 00-00341. Services offered by Birch South include local and long distance telephone to residential and business customers in Chattanooga, Knoxville, Memphis, and Nashville. Birch South offers these services to its customers through a combination of leased and owned network facilities. Birch South has also deployed collocations and transmission equipment in certain markets to deliver digital subscriber line service, which will support dedicated high-speed Internet/data and eventually voice services. In addition to Tennessee, Birch South is certificated to provide telecommunications services in Alabama, Florida, Georgia, Kentucky Louisiana, Mississippi, North Carolina, and South Carolina.
2. Birch, the parent company of Birch South, is incorporated under the laws of Delaware also with its principal business offices located at 2020 Baltimore Avenue, Kansas City, MO 64108-1914. Although Birch is not itself a

telecommunications carrier, Birch wholly owns several subsidiaries<sup>2</sup> that offer state-of-the-art telecommunications services primarily to small and mid-sized businesses in the Midwest and Southeastern United States. The Applicant is the only subsidiary of Birch that provides telecommunications services in Tennessee.

**B. BTI Ventures, LLC**

3. BTI a wholly owned subsidiary of KKR, currently holds a controlling interest in Birch. BTI's only business is its approximately 90 percent ownership share (on a fully diluted basis) of the Applicant's parent company, Birch. KKR is an investment firm that makes equity investments on behalf of itself and its investors. These institutional investors include state and corporate pension funds, banks, insurance companies, and university endowments. Since its founding in 1976, KKR has completed more than 100 transactions involving in excess of \$100 billion of total financing. KKR's business is making equity investments for long-term appreciation through controlling either ownership of a company or a strategic minority position. KKR has offices in New York City, Menlo Park, and London.

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<sup>2</sup> In addition to the Applicant, the following subsidiaries of Birch currently provide telecommunications services: American Local Telecommunications, L.L.C. (Texas); Birch Telecom of Kansas, Inc. (Kansas); Birch Telecom of Missouri, Inc. (Missouri); Birch Telecom of Oklahoma, Inc. (Oklahoma); Birch Telecom of Texas Ltd., L.L.P. (Texas). Further, Birch Telecom of the Great Lakes, Inc. is certificated in Illinois, Indiana, Michigan, Ohio, and Wisconsin but does not provide services in those states. Each of these subsidiaries are wholly owned by Birch, with the exception of Birch Telecom of Texas, Ltd., L.L.P., of which Birch is a Limited Partner with a 99 percent interest, and Birch Texas Holdings, Inc. is the General Partner with a 1 percent interest.

**C. Post-Restructuring Shareholders of Birch South's Parent Company**

4. Upon completion of the Reorganization Plan, approximately 100 percent of Birch's capital stock will be owned by a diffuse group of investment banks.<sup>3</sup> The investment banks to own five percent or greater equity in Birch, and their approximate post-restructuring equity share (rounded to the nearest 1 percent) are as follows: LB 1 Group, Inc. (25 percent), Bear Stearns Corporate Lending, Inc. (10 percent), Bank of America, N.A. (8 percent), Banker's Trust Company (8 percent), and LT Holdco I, L.L.C. (8 percent), Fleet National Bank (6 percent), IBM Credit Corporation (6 percent), Morgan Stanley Dean Witter Investment (5 percent), and Lehman Brothers (5 percent). The remainder of Birch will be owned in varying amounts by holders of Birch's 14 percent Senior Notes due 2008, existing management and, if they elect to purchase shares of Birch's common stock pursuant to the terms the Equity Offer, holders of Birch's existing preferred stock.
5. The following is a description of LB 1 Group, Inc. and Bear Stearns Corporate Lending, Inc., the two companies that will own a greater than 10 percent interest in Birch upon approval of this Application.

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<sup>3</sup> The ownership percentages stated herein assume that no shares of common stock will be issued to holders of Birch's 14 percent Senior Notes due 2008 and preferred stock pursuant to the equity offer (the "Equity Offer") to be made to such holders pursuant to the Reorganization Plan and do not account for the issuance of any equity to Birch's management or employees pursuant to the Birch Telecom, Inc. 2002 Equity Incentive Plan to be adopted by Birch under the terms of the Reorganization Plan. Shares sold in the Equity Offer or 2002 Equity Incentive Plan will dilute the percentage ownership by each investment bank in Birch, although certain banks may mitigate this dilution through participation in the Equity Offer. The possible issuance of new equity, however, will not affect ultimate control post-restructuring; control of Birch will vest in the shareholders generally, with no individual shareholder having *de jure* or *de facto* control.

**1. LB 1 Group, Inc.**

6. LB 1 Group, Inc., an investment firm and a wholly owned subsidiary of Lehman Brothers, Inc. (together "Lehman"), will hold the largest percentage share of Birch's capital stock upon completion of the Reorganization Plan, approximately 25 percent. Lehman is a global investment bank serving the financial needs of corporations, institutions, governments and high-net-worth investors worldwide. Lehman actively participates in the global capital markets through a closely integrated network of offices anchored by a worldwide headquarters in New York and regional headquarters in London and Tokyo. Since Lehman was founded in 1850, it has built a global reputation for providing state-of-the-art research, distribution, trading and financing services. Lehman has the financial strength and support required to maintain leadership positions in all of its businesses. It is a leading underwriter of global equity and fixed-income securities.

**2. Bear Stearns Corporate Lending, Inc.**

7. Bear Stearns Corporate Lending, Inc., an investment firm and a wholly owned subsidiary of The Bear Stearns Companies, Inc. (together, "Bear Stearns"), will own approximately 10 percent of Birch's capital stock upon completion of the Reorganization Plan. Bear Stearns is a leading global investment banking, securities trading and brokerage firm. Founded in 1923, Bear Stearns offers financial services to corporations, institutions, governments and individuals. Bear Stearns focuses its core business in the areas of Capital Management, Wealth Management, and Global Clearing Services. Bear

Stearns processes approximately 10 percent of the New York Stock Exchange ("NYSE") volume cleared daily through the National Securities Clearing Corp. It also accounts for approximately 20 percent of the short interest on the NYSE, making it one of the largest securities borrowers in the world. Bear Stearns had total capital of \$29.8 billion (as of Nov. 30, 2001) and total assets of \$171.1 billion (as of Aug. 31, 2001). According to the April 2001 issue of Institutional Investor magazine, Bear Stearns is the seventh largest securities firm in terms of total capital.

## **II. Description of the Transaction**

8. The debt and equity restructuring proposed in the Reorganization Plan, will effect a change in the equity ownership and control of the Applicant's parent company, Birch, and therefore a change in indirect control of the Applicant. BTI currently owns approximately 90 percent, on a fully diluted basis, of the shares of outstanding capital stock in Birch. BTI also controls a majority of Birch's board of directors. Upon implementation of the Reorganization Plan, unless it elects to participate in the Equity Offer, BTI's equity share will be reduced to approximately zero,<sup>4</sup> and no single shareholder will own a majority of the voting stock of Birch. (See description of post-restructuring shareholders, above.) Furthermore, following the Reorganization Plan, it is anticipated that BTI will no longer control any seats on the board of directors, and no single shareholder, nor group of shareholders as parties to a voting agreement, will be vested with the power to elect a majority of the board. As

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<sup>4</sup> See, *infra*, note 3.

no single shareholder will possess *de jure* or *de facto* control of Birch, control will rest in the shareholders generally of Birch.

9. Birch has elected to commence a chapter 11 case under the federal Bankruptcy Code. Upon the filing of its bankruptcy case, control of Birch shifted from BTI to Birch, as Debtor-in-Possession. In conjunction with its bankruptcy filing, Birch has proposed a prepackaged chapter 11 plan of reorganization. In order to secure acceptance of the Reorganization Plan in bankruptcy, Birch solicited and received sufficient votes to enable it to be confirmed by a United States Bankruptcy Court.
10. The Reorganization Plan provides for a major restructuring of Birch's financial obligations and capital structure. The result of the restructuring will be a reorganized company with a significant reduction in outstanding debt, which Birch believes is necessary to permit it to compete effectively in today's economic environment. The Reorganization Plan will eliminate approximately \$99 million of senior secured indebtedness and \$133.8 million of senior unsecured indebtedness. Following the Reorganization Plan, Birch will have no long-term debt other than debt under a New Senior Credit Facility in the amount of \$100 million and approximately \$3.9 million in other long-term debt and capital leases.
11. The Reorganization Plan also provides for the issuance of new Birch common stock to the companies current senior lenders and its note holders in return for the elimination of approximately \$98 million of debt under the Senior Credit Facility and the satisfaction and retirement of Birch's 14 percent Senior Notes.



due in 2008. Pursuant to the Reorganization Plan, the senior lenders will receive 2,400,000 shares of new Birch Common Stock, and the note holders will receive 600,000 shares of new Birch Common Stock. The Reorganization Plan also provides for the Equity Offer pursuant to which 600,000 shares of new Birch Common Stock may be sold to the holders of Birch's 14 percent Senior Notes due 2008 and current holders of Birch's preferred stock.

### **III. Customer Impact**

12. Birch South anticipates no adverse impact on service to any of its customers as a result of this reorganization or bankruptcy filings. Birch South does not anticipate any changes to its rates or quality of service. Further, Birch South does not intend to change its name. The major outcome of the Reorganization Plan will be a significant improvement to the financial position of Birch South's parent company. As described above, Birch South's parent company will be owned by leading financial institutions that possess the necessary resources and skill to guide a company such as Birch. The preceding descriptions of Birch's two largest shareholders post-Reorganization Plan demonstrate the financial strength and competence of these shareholders.

### **IV. Public Interest Statement**

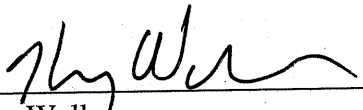
13. Approval of the Reorganization Plan is in the public interest. The Reorganization Plan proposed by Birch is essential to its, and, by extension, Birch South's, ongoing success. By eliminating Birch's current obligations under its outstanding notes, refinancing its senior credit facility and

converting its outstanding preferred stock, Birch's financial condition and overall creditworthiness will improve, thereby enhancing its ability to make the necessary expenditures to continue to compete effectively in the telecommunications market.

**WHEREFORE**, the Applicant respectfully requests that the Commission authorize the proposed indirect transfer of control of Birch South that will result from the restructuring of Birch South's parent company.

Respectfully Submitted,

**BIRCH TELECOM OF THE SOUTH, INC.**

By: 

Henry Walker  
Boult Cummings Conners Berry, PLC  
414 Union Street, Suite 1600  
P.O. Box 198062  
Nashville, TN 37219  
Tel: (615) 252-2363  
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Email: hwalker@bccb.com

*Counsel for Birch Telecom of the South, Inc.*

## VERIFICATION

I, David E. Scott, hereby declare under penalty of perjury, that I am an officer of Birch Telecom of the South, the Applicant in this proceeding; that I am authorized to make this verification on the Applicant's behalf; that I have read the foregoing Application; and that the facts stated therein are true and correct to the best of my knowledge, information, and belief.



David E. Scott  
President  
Birch Telecom of the South, Inc.  
Tel: (816) 300-3000  
Fax: (816) 300-3247  
E-mail: dscott@birch.com

Sworn to and subscribed before me this 30<sup>th</sup> day of July, 2002.



Notary Public

My Commission Expires: June 6, 2004

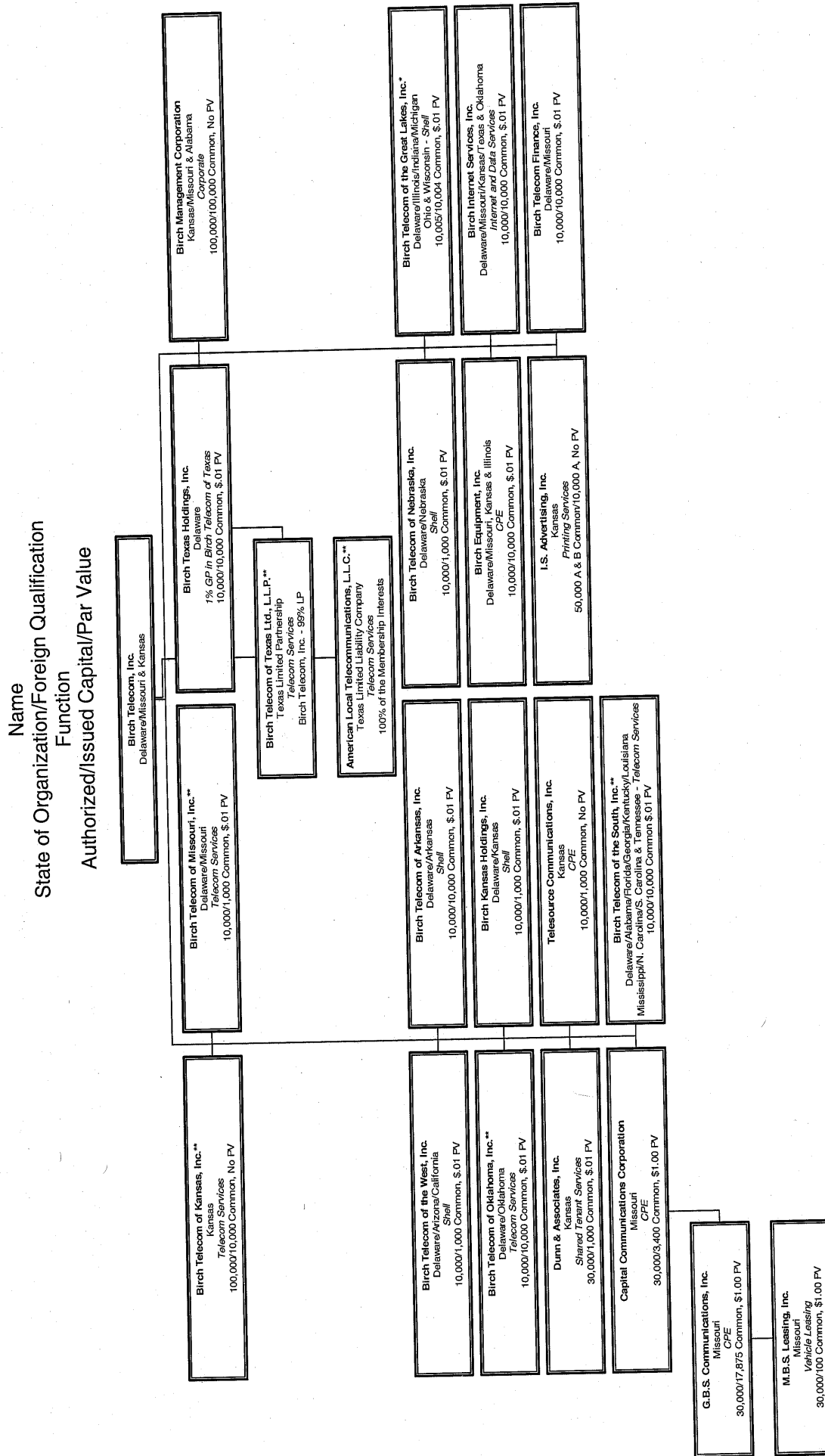
**BARBARA P. FILLINGER**  
Notary Public-Notary Seal  
State Of Missouri  
Commissioned In Jackson County  
My Commission Expires: June 6, 2004

**EXHIBIT A**

**CORPORATE ORGANIZATION CHART  
(TO REMAIN UNCHANGED PRE- AND POST-RESTRUCTURING)**

# Birch Corporate Organization Chart

All Direct Wholly Owned Subsidiaries of Birch Telecom, Inc., Except for the Following Indirect Wholly Owned Subsidiaries:  
 Birch Telecom of Texas Ltd., L.L.P., American Local Telecommunications, L.L.C., G.B.S. Communications, Inc., and M.B.S. Leasing, Inc.



\* Entities that hold certificates of authority from by state public utility commissions to provide telecommunications service but that do not currently provide service.  
 \*\* Entities that hold certificates of authority from by state public utility commissions to provide telecommunications service and that are providing service.

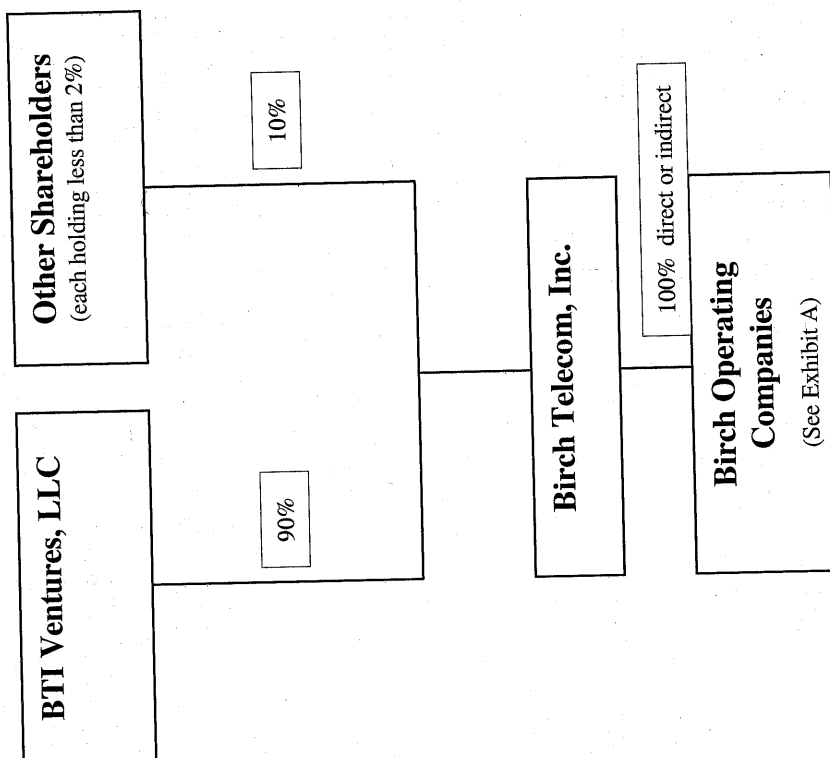
**EXHIBIT B**

**ILLUSTRATIVE CHART PRE- AND POST-RESTRUCTURING**

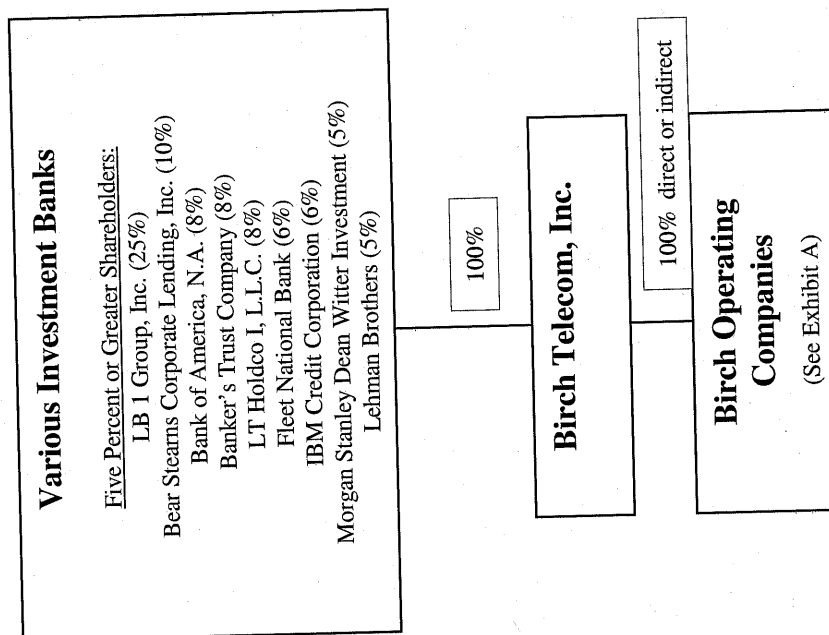
# ILLUSTRATIVE CHART PRE- AND POST-RESTRUCTURING

(Ownership Shares Rounded to the Nearest 1 %)

## PRE-RESTRUCTURING



## POST-RESTRUCTURING



\*The ownership percentages stated herein assume that no shares of common stock will be issued to holders of Birch Telecom, Inc.'s ("Birch's") 14 percent Senior Notes due 2008 and preferred stock pursuant to the equity offer (the "Equity Offer") to be made to such holders pursuant to the Reorganization Plan and do not account for the issuance of any equity to Birch's management or employees pursuant to the Birch Telecom, Inc. 2002 Equity Incentive Plan to be adopted by Birch under the terms of the Reorganization Plan. Shares sold in the Equity Offer or 2002 Equity Incentive Plan, will dilute the percentage ownership of each investment bank in Birch, although certain banks may mitigate this dilution through participation in the Equity Offer. The possible issuance of new equity, however, will not affect ultimate control post-restructuring; control of Birch will vest in the shareholders generally, with no individual shareholder having *de jure* or *de facto* control.